IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 232 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI CHANDUBHAI GADIA

Versus

GUJARAT OXYGEN & ACITILIEN CO.

Appearance:

MR. Prabhakar Upadhyay for MUKESH H RATHOD for Petitioner.

MR MANISH R BHATT for Respondent.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 13/02/2002

ORAL JUDGEMENT

The petitioner in this petition has challenged the award passed by the Labour Court, Bhavnagar, in Reference No. 746/87 to the extent of withholding 50% backwages of the entire period commencing from 7-2-1987 till the petitioner was reinstated under the award dated 6-1-1990. Heard learned advocate, Mr. Prabhakar Upadhyay appearing on behalf of Mr. Mukesh Rathod, advocate for the petitioner. No one is present on behalf

of the respondent. The petitioner has submitted that the award passed by the Labour Court to the extent of withholding 50% backwages of the petitioner by way of punishment, while exercising the power under Section 11A of the Industrial Disputes Act, 1947, was not just and proper and not in accordance with law, especially when the Labour Court has given a finding that the charge levelled against the petitioner was not proved. It is also submitted that the Labour Court has not applied its mind in respect of penalty aspect as the petitioner had merely entered into the office without permission and for that purpose if 50% backwages is withheld, it would amount to punishment of imposition of fine of more than Rs. 20,000/= on the petitioner. It is further submitted that the Labour Court has not considered in its proper perspective the explanation given by the petitioner that he had gone to the Office of the Manager for finding out the detergent powder and at night time there was no person from whom the permission could have been obtained by the petitioner. Lastly it was submitted that the Labour Court has ignored all the relevant aspects of the matter and passed an award withholding 50% backwages and thereby the Labour Court has committed error to this effect.

2. I have heard the learned advocate, Mr. Upadhyay, and I have also gone through the award passed by the Labour Court. It is true, that the charge of playing mischief with the record was not proved against the petitioner and it is equally true that the petitioner has entered into the office without permission at 1.00 O'Clock at night and opened the drawer of the table of the Manager. These facts were culled out from the statements of two witnesses recorded by the Labour Court during the course of proceedings. Mr. K.D. Makwana, who was working as a Shift In-charge has specifically stated in his statement that he has not given any permission to the petitioner for entering into the Office of the Manager and that he has seen the petitioner entering into the said office at around 12.30 in the late night. The trial Court has recorded the statement of Shri Desalbhai. He has stated that he has seen the petitioner entering into the office and opening the drawer of the table. This fact itself proves that the petitioner has not entered into the office merely for the sake of fun. Even his explanation that he has entered the office for taking out detergent powder was also not found favour with the trial Court and it appears from the record that no one else instructed the petitioner to take out the detergent powder from the office. On the contrary, one Mr. Bharat Pandya has stated in his

statement that he was to require detergent powder for checking of valves for advance delivery and for that purpose he has gone to the office. After having considered all these pleadings and statements of the witnesses, the Labour Court has come to the conclusion that the order of dismissal passed by the respondent was not just and proper looking to the nature of the misconduct and especially when the main charge was not proved against the petitioner. However, on appreciation of these very materials and evidences, the Labour Court has ordered to withhold 50% of backwages and this finding or conclusion of the Labour Court is just, proper and reasonable especially when the fact regarding the petitioner's entry in the office without permission and opening of the drawer by the petitioner was accepted to have been proved.

3. In this view of the matter, I do not see any reason to interfere in the award passed by the Labour Court withholding 50% of backwages. I also do not see any reason to exercise the power under Article 227 of the Constitution especially when the finding of fact is arrived at by the Labour Court after proper appreciation of relevant materials and evidence. The petition is, therefore, dismissed. Rule is discharged with no order as to costs.

rmr. [K.A. Puj, J.]